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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,024	04/15/2004	John G. Catenacci	00724.P1US	9086
28778	7590	09/07/2005	EXAMINER	
JOHNSON & STAINBROOK, LLP 3558 ROUND BARN BLVD., SUITE 203 SANTA ROSA, CA 95403			PECHHOLD, ALEXANDRA K	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,024

Applicant(s)

CATENACCI ET AL.

Examiner

Alexandra K. Pechhold

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 6-8 is/are rejected.
- 7) ☒ Claim(s) 5 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 5 is objected to because of the following informalities: claim 5 recites "said pivoting means" which is set forth in claim 4, although applicant has claim 5 dependent on claim 1. Claim 5 should be dependent on claim 4, and for the purposes of examination, is being treated as such.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 3, 4, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore (US 4,907,358).**

Regarding claim 1, Moore discloses a road machine capable of being a tire track remover comprising:

- a blade frame having a bend (seen as the top surface of blades 114, 116 in Figs. 2 and 3),
- at least one blade assembly having a semi-flexible blade (seen as blades 114, 116 which are disclosed as comprising composite plastic which inherently has some flexibility) with a lower edge and upper edge, a front side and rear side, a vertical axis and horizontal axis, the upper edge

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attached to the blade frame so as to generally conform to the bend in the frame such that the front side of the blade is generally concave about the vertical axis (as seen in Figs. 2 and 3),

- attachment means for removably attaching the blade assembly to the vehicle (disclosed as the four bar linkage means in claim 1),
- height adjustment means (disclosed in column 7, lines 47-62), and
- pressure adjustment means (disclosed as springs 94, 96 that bias blades 114, 116 to a planar position, see Col 7, lines 44-46),
- wherein in use the blade, height adjustment means, and pressure adjustment means cooperate to press the blades into soft and movable paving material as recited.

Regarding claim 3, Moore discloses a box member (48) shown in Fig. 4, which is capable of receiving weights.

Regarding claim 4, Moore discloses a pivoting means for some amount of side-to-side rocking movement of the blade, since bolts extend through openings (34, 36) and maintain members (60-62 and 66-68) within a confined area (see Fig. 3), though allowing for some amount of pivotal movement therein (Col 6, lines 53-63).

Regarding claim 6, the blades of Moore have a rear side that is arc-shaped and concave relative to the horizontal axis as seen in Figs. 2 and 3.

Regarding claim 7, the blade is generally symmetrical about the vertical axis as seen in Figs. 2 and 3.

Regarding claim 8, the bend in the frame is capable of being adjusted, and a longitudinal strut affixed to the frame can be viewed as channels (80, 84), which provide structural support and define the degree of bend.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (US 4,907,358).** Moore fails to disclose the height adjustment means being a parallel scissors assembly. Moore instead utilizes a winch (130) to lift member (134) and force channels (80, 84) and associated blades (114, 116) to rise or lower as desired (Col 7, lines 47-62). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the height adjustment means of Moore to comprise a parallel scissors assembly, since altering the mechanical configuration of the height adjustment means still produces the same desired result as addressed by Moore, that is, to affect blade height as desired to conform to road irregularities.

Allowable Subject Matter

6. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

7. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (571) 272-6994. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (571) 272-6998. The fax phone number for this Group is (703) 872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
8/29/05